

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4834 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

THAKORLAL @ PRAVINBHAI S/O. PURSHOTTAMDAS SONI

Versus

COMMISSIONER OF POLICE

Appearance:

Mr.S.R.Patel, Advocate for the petitioner

Mr.S.P.Dave, A.G.P. for Respondents No. 1,2 & 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 12/09/97

ORAL JUDGEMENT

1. In this Special Civil Application under Article 226 of the Constitution of India the petitioner has brought under challenge the impugned order of detention dated 14th May 1997 passed by respondent No.1 under Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short).

2. The grounds of detention appearing at Annexure :
C, inter-alia, indicate that the petitioner has been a head-strong person. He has been running a Guest House and Hotel in the name of Samrat Guest House on Narol-Naroda Highway road and hotel Sagar on Isanpur cross roads. It has been alleged that in the company of his son and other associates the petitioner has been indulging in running a brothel and has been guilty of dealing in immoral traffic by bringing the girls from outside into the Hotel/Guest House. Following offences have been registered against the petitioner :

Sr. Police Station Under Section Remarks

No. CR No.

1. Women Police 3,4 & 7 of the Pending
Station,A'bad Suppression of investigation
CR No.3/95 Immoral Traffic
dtd.29.3.95 in Women and
Girls Act,1956.

2. Vatva Police - do - Pending in
Station,A'bad Court
CR No.218/96
dt.6.8.96

3. Women Police - do - - do -
Station,A'bad
CR No.4/96
dtd.18.10.96

4. Vatva Police 342,323,376, - do -
Station,A'bad 468,493,506(1)
CR No.418/96 114 I.P.C. and
dt.18.10.96 Sec.3(2)(5) of
SITA Act.

The particulars of the aforesaid registered offences have been set out in the grounds of detention.

3. It has asserted that in order to prevent the petitioner from indulging in such an activity as has been referred to hereinabove and in order to prevent the petitioner from generating atmosphere of fear amongst citizens resulting indisturbance of public order the petitioner has been required to be preventively detained as above.

4. In support of the aforesaid conclusion reached by the Detaining Authority the statement of four witnesses

have been relied upon for the incidents dated 2.5.1997 and 6.5.1997, inter-alia, indicating that the petitioner and his associates have been assaulting the concerned witnesses in public and generating the atmosphere of fear amongst the people collected at the time of such incidents. The petitioner has been branded as immoral traffic offender under Section 2(g) of the PASA Act on the basis of the aforesaid grounds of detention.

5. The impugned order of detention has been challenged inter-alia on the ground that the representation dated 4th July 1997 moved by the petitioner's wife Hansaben Thakorlal Soni and addressed to the Home Minister, Sachivalaya, Gandhinagar has not been decided so far and if decided the petitioner/his wife has not been communicated the decision taken on such representation. The ground has been taken in Para : 18(A) which reads as under :

"18(A) The petitioner submits that a representation dtd.4.7.1997 was made to the Hon'ble Home Minister, Gujarat State, by his wife of the petitioner which was duly received and another representation made by the petitioner dtd. 10.6.1997 to the Hon'ble Advisory Board, which was also received by the said authority. Whether it is considered or not ? The petitioner submits that if considered then there is a great delay in considering the said representation by the said authorities and thus the petitioner's fundamental right guaranteed under Art. 22(5) of being considered his representation at the earliest point of time is vitiated and that the continued detention has become illegal."

6. Dealing with the aforesaid ground Mr.J.R.Rajput, Under Secretary, Government of Gujarat, Home Department, Sachivalaya, Gandhinagar has filed Affidavit in Reply in following terms :

"2. With reference to Para 18(A), I say and submit that representation dt.4.7.'97, made by detenu's wife has neither received in the office of Home Minister nor in Home Department. It is true that State Government had received the petitioner-detenu's representation dt.10.6.'97 addressed to the Chairman, Advisory Board, along with the Advisory Board's report on 21.6.'97. It

was put up for consideration to Under Secretary (Law & Order) on 23.6.'97 as it was public holiday on 22.6.'97. Under Secretary (Law & Order) cleared the said file on 23.6.'97 which was sent to Deputy Secretary who cleared it on 24.6.'97. Then the said file was sent to the office of the Addl.Chief Secretary (Home). I crave leave to submit that in addition to important issues relating to Home Department, Addl. Chief Secretary (Home) was engaged in the meeting held on 25.6.'97 for reviewing A.C.B. cases and in the Cabinet Meeting held at Gandhinagar on 26.6.'97 as well as in the meeting held on 26.6.'97 at Ahmedabad to review the preparations and law and order situation in relation to Rath Yatra Festival falling on 6th July, 1997. Addl. Chief Secretary (Home) considered the said representation and rejected it on 27.6.'97. Communication to that effect was sent to the detenu vide letter dtd.27.6.'97. Hence, there is no delay on the part of State Government in considering the said representation."

It might be noted that the aforesaid Affidavit in reply was filed when the copy of hand written representation was shown to the learned A.G.P. for the respondents along with white postal receipt bearing a round postal stamp dtd.4.7.1997 issued from the High Court Post Office and the postal acknowledgement received by the petitioner's wife showing rubber stamp of Gujarati version of State Minister for Home & Energy (independent charge) with serial number and date columns. The said rubber stamp bears some initial.

7. It is in the above connection that Mr.Satish Patel, learned Advocate appearing for the petitioner placed reliance upon a decision of this Court in Girishbhai Shivabhai Tikmani V/s. District Magistrate rendered in Special Civil Application No.4460 of 1997 in a PBM matter. In that case similar argument was canvassed on behalf of the Central Government as can be seen from the Affidavit in Reply referred to hereinabove. This Court observed that the white postal receipt bearing round seal of the Postal Department would indicate that the representation was dispatched on a particular date. Here also the same observation would apply with regard to white receipt which has now been placed on record. The white postal receipt also contains the address of the Hon'ble Home Minister, Sachivalaya, Gandhinagar. Added to that, here there is an acknowledgement which has been

received back by the petitioner and the same bears the stamp of the concerned department, as stated above. It is a fact that the aforesaid representation has remained undecided as on today as was the case before this Court in Girishbhai Shivabhai Tikmani's case (*supra*). In that case reliance was placed on the decision of the Apex Court in the case of Aslam Ahmed V/s. Union of India, reported in AIR 1989 SC 1403. Accepting the submission of learned Counsel in that case this Court observed as under:

"There is a presumption with regard to receipt of representation when cogent evidence of its despatch has been shown to this Court. The result is that the avoidable and unexplained delay in deciding the aforesaid representation has clearly resulted in rendering the continued detention of the petitioner illegal and constitutionally impermissible."

In my opinion having heard the learned Advocate for the petitioner and the learned A.G.P. for the respondent the same conclusion has got to be reached. In the result the continued detention of the petitioner under the impugned order of detention will have to be held illegal and constitutionally impermissible.

8. As the petitioner succeeds on the aforesaid ground of non-consideration of representation dated 4.7.1997 it would not be necessary to deal with other ground of challenge levelled against the impugned order of detention.

9. In view of what is stated above, the continued detention of the detenu under the impugned order of detention would be held illegal and the same is put an end to. It is directed that the petitioner Thakorlal Pravinbhai s/o Purshottamdas Soni shall be set at liberty forthwith if he is not required to be detained in any other case. Rule made absolute accordingly.

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